

AMENDED IN ASSEMBLY AUGUST 7, 2006

AMENDED IN SENATE APRIL 25, 2006

SENATE BILL

No. 1340

Introduced by Senator Margett

February 17, 2006

An act to amend Sections ~~17213.5, 17406, 17406~~ and 17600 of, *and to add Section 17421.5 to*, the Financial Code, relating to escrow agents.

LEGISLATIVE COUNSEL'S DIGEST

SB 1340, as amended, Margett. Escrow agents.

The Escrow Law provides for licensing and regulation of escrow agents, other than certain exempt persons, by the Commissioner of Corporations. Existing law ~~sets forth various requirements for an escrow licensee to establish additional business office locations, and requires the commissioner to license the designated premises as a branch of the parent licensee within 30 days of receipt of the application, unless the commissioner makes certain findings.~~

~~This bill would instead require that action to occur within 20 days of receipt of the application.~~

~~Existing law~~ requires a licensee whose license has been surrendered or revoked to submit a closing audit report to the commissioner within 105 days after the effective date of the surrender or revocation.

This bill would also require that licensee to submit certain unaudited financial statements to the commissioner.

Existing law generally provides that surrender of a license becomes effective 30 days after receipt of an application to surrender the license or within a shorter period of time as determined by the commissioner.

This bill would instead provide that surrender of a license becomes effective ~~105~~ 115 days after receipt of the application and ~~submittal of the unaudited financial statements and closing audit report~~, or within a shorter period of time as determined by the commissioner, *except in certain circumstances*.

This bill would also authorize a licensee to charge a fee for administering and monitoring of funds held in an escrow that has been postponed or canceled subject to various conditions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 17213.5 of the Financial Code is~~
2 ~~amended to read:~~
3 ~~17213.5. Licensees of this division shall be entitled to~~
4 ~~establish additional business office locations by compliance with~~
5 ~~all of the following:~~
6 ~~(a) Filing with the commissioner notice of the intended~~
7 ~~address, or addresses:~~
8 ~~(b) Payment of the fees prescribed in Section 17207.~~
9 ~~(c) Filing with the commissioner any additional bonds for the~~
10 ~~purposes set forth in Sections 17202 and 17203. In addition to~~
11 ~~the amount required by Section 17202, the amounts for~~
12 ~~additional office locations shall be five thousand dollars (\$5,000)~~
13 ~~for each additional location. The aggregate amounts of all bonds~~
14 ~~given by a licensee under this section shall be for the purpose of~~
15 ~~complying with the conditions of Sections 17202 and 17203~~
16 ~~regardless of the office location at which any act violating those~~
17 ~~conditions takes place, and upon payment of the aggregate~~
18 ~~amount, the surety is completely released from further liability~~
19 ~~under the bond or bonds. An escrow agent licensed prior to~~
20 ~~January 1, 1996, shall comply with the requirements of this~~
21 ~~subdivision at the time of the next renewal of its bond.~~
22 ~~(d) Filing with the commissioner financial statements prepared~~
23 ~~in accordance with generally accepted accounting principles. If~~
24 ~~the licensee's fiscal year end is more than six months before the~~
25 ~~date of filing the application, the commissioner may require~~
26 ~~current financial statements which shall not be more than 60 days~~
27 ~~old. The interim financial statements may be unaudited.~~

1 ~~(e) Filing with the commissioner the names and addresses of~~
2 ~~the licensee's owners and employees to be stationed at the new~~
3 ~~location, showing that the operation of the additional office, or~~
4 ~~offices, will be under the complete management and control of~~
5 ~~the parent licensee.~~

6 ~~(f) Filing with the commissioner statements offsetting and~~
7 ~~meeting each of the conditions set forth in Section 17209.3.~~

8 ~~With respect to all applications for authorization to establish~~
9 ~~additional locations, the commissioner shall promptly commence~~
10 ~~his or her investigation and review of the application.~~

11 ~~The commissioner shall within 20 days from the receipt by the~~
12 ~~commissioner of a separate and complete application, license the~~
13 ~~designated premises as a branch of the parent licensee, unless the~~
14 ~~commissioner finds (1) that the applicant has failed to comply~~
15 ~~with all of the requirements of this section, (2) that the applicant~~
16 ~~then fails to meet any of the standards applicable for the issuance~~
17 ~~of a license pursuant to Section 17209.3, or (3) that a hearing~~
18 ~~shall be held to determine whether the application should be~~
19 ~~granted or denied.~~

20 ~~SEC. 2.~~

21 *SECTION 1.* ~~Section 17406 of the Financial Code is amended~~
22 ~~to read:~~

23 17406. (a) Each licensee shall submit to the commissioner, at
24 the licensee's own expense, an audit report containing audited
25 financial statements covering the calendar year or, if the licensee
26 has an established fiscal year, then for that fiscal year, within 105
27 days after the close of the calendar or fiscal year, as applicable.
28 At that time, each licensee shall also file additional relevant
29 information that the commissioner may require.

30 (b) Within 30 days after receipt of a request from the
31 commissioner, a licensee or other person subject to this division
32 shall submit to the commissioner, at the person's own expense,
33 an audit report containing audited financial statements covering
34 the 12 calendar months next preceding the month of receipt of
35 the request, or for another period as the commissioner may
36 require. Unless the public interest shall otherwise require, the
37 commissioner shall exempt a licensee from the provisions of
38 subdivision (a) hereof in whole or in part if the licensee has
39 complied with a request pursuant to this subdivision as of a date

1 within the calendar or fiscal year for which the exemption is
2 granted.

3 (c) A licensee whose license has been surrendered or revoked
4 shall submit to the commissioner, at its own expense, its
5 unaudited financial statements, prepared in accordance with
6 generally accepted accounting principles and consisting of at
7 least a balance sheet and statement of income and expense as of
8 the date the license is surrendered or revoked, and, on or before
9 105 days after the effective date of the surrender or revocation, a
10 closing audit report as of that effective date, or for another period
11 as the commissioner may specify. The report shall include the
12 information specified by the commissioner. A licensee who has
13 complied with this subdivision is exempted from subdivision (a)
14 of this section.

15 (d) The reports and financial statements referred to in
16 subdivisions (a), (b), and (c) of this section shall include at least
17 a balance sheet and a statement of income for the year ended on
18 the balance sheet date together with other relevant information as
19 the commissioner may require, and shall be prepared in
20 accordance with generally accepted accounting principles, and
21 shall be accompanied by a report, certificate, or opinion of, an
22 independent certified public accountant or independent public
23 accountant. The audits shall be conducted in accordance with
24 generally accepted auditing standards and the rules of the
25 commissioner.

26 (e) A licensee shall make other special reports to the
27 commissioner as the commissioner may from time to time
28 require.

29 (f) For good cause and upon written request, the commissioner
30 may extend the time for compliance with subdivisions (a) and (b)
31 of this section.

32 (g) A licensee shall, when requested by the commissioner,
33 submit its unaudited financial statements, prepared in accordance
34 with generally accepted accounting principles and consisting of
35 at least a balance sheet and statement of income and expense as
36 of the date and for the period specified by the commissioner. The
37 commissioner may require the submission of those reports on a
38 monthly or other periodic basis.

39 (h) If the report, certificate, or opinion of the independent
40 accountant referred to in subdivision (d) hereof is in any way

1 qualified, the commissioner may require the licensee to take
2 action as he or she deems appropriate to permit an independent
3 accountant to remove the qualifications from the report,
4 certificate or opinion.

5 (i) The commissioner may reject any financial statement,
6 report, certificate or opinion by notifying the licensee or other
7 person required to make the filing of its rejection and the cause
8 thereof. Within 30 days after the receipt of the notice, the
9 licensee or other person shall correct the deficiency and the
10 failure so to do shall be deemed a violation of this division. The
11 commissioner shall retain a copy of all filings so rejected.

12 (j) The commissioner may make rules specifying the form and
13 content of the reports and financial statements referred to in this
14 section, and may require that those reports and financial
15 statements be verified by the licensee in the manner as he or she
16 may prescribe.

17 (k) Upon completion of the reports and financial statements
18 referred to in subdivisions (a), (b), and (c), the independent
19 accountant shall submit to the commissioner complete copies of
20 the reports and financial statements at the same time that copies
21 of the reports and financial statements are submitted to the
22 licensee.

23 *SEC. 2. Section 17421.5 is added to the Financial Code, to*
24 *read:*

25 *17421.5. (a) A licensee may charge a fee for administering*
26 *and monitoring of funds held in an escrow that has been*
27 *postponed or canceled beyond the most recent closing date*
28 *agreed upon by the parties in the written instructions if all of the*
29 *following are met:*

30 *(1) The escrow has been postponed for at least two months*
31 *from the most recent closing date agreed upon by the parties in*
32 *writing, or has been canceled.*

33 *(2) The licensee did not cause the postponement or*
34 *cancellation of escrow.*

35 *(3) The licensee is authorized by the written instructions of the*
36 *parties to charge, and deduct from funds on deposit, a monthly or*
37 *fraction thereof hold-open fee, if the fee is disclosed in the*
38 *written instructions and agreed upon by all parties.*

39 *(b) This section shall apply to an escrow agreement made on*
40 *and after January 1, 2007.*

1 SEC. 3. Section 17600 of the Financial Code is amended to
2 read:

3 17600. (a) An escrow agent's license remains in effect until
4 surrendered, revoked, or suspended.

5 (b) Surrender of a license becomes effective ~~105 days after~~
6 ~~receipt of an application to surrender the license and completion~~
7 ~~and submittal to the commissioner of the licensee's unaudited~~
8 ~~financial statements and closing audit report in accordance with~~
9 ~~subdivision (c) of Section 17406, or within 115 days after receipt~~
10 ~~of an application to surrender the license or within~~ a shorter
11 period of time as the commissioner may determine, unless (1) a
12 revocation or suspension proceeding is pending when the
13 application is filed or (2) a proceeding to revoke or suspend or to
14 impose conditions upon the surrender is instituted within 30 days
15 after the application is filed *or the closing audit report is*
16 *received, or (3) the commissioner has by order imposed a longer*
17 *period of time to receive and review the closing audit report.* If a
18 proceeding is pending or instituted, surrender of a license
19 becomes effective at the time and upon those conditions as the
20 commissioner determines.